IN THE HIGH COURT OF DELHI AT NEW DELHI

Crl.M.C. No.4544/2003

Sh. Kesho Ram Gupta ..... Petitioner
! through: Mr. Anuj, Advocate

VERSUS

$ Sh. K.R.Chawla & Ors. ..... Respondents
^ through: Mr. M.N.Dudeja, Advocate for State.

% **D**ATE OF DECISION: 09-08-2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether judgment should be reported in Digest?

: PRADEEP NANDRAJOG, J.(Oral)

1. Petitioner has been arrayed as an accused in a complaint lodged under Section 18(a)(i) and Section 18(c) read with Sections 27(c)(d)(e)(ii) of the Drugs and Cosmetics 1940. Pertaining to the petitioner who has been arrayed as accused No.2, necessary allegations in the complaint are to be found in para 4 of the complaint which reads as under:-

> "4. That Kesho Ram Gupta (Accused No.2) and G.C.Sharma (Accused No.3) were the Managing Director and Executive Director respectively of accused No.1 on or before March 96

and were responsible to the company for the conduct of its day to day business at the time of manufacturing of the drug in question during March 96."

2. Needless to state other averments relate to the merits of the controversy viz the allegation that certain drugs which were seized, on testing, failed to qualify as per standards of quality prescribed under the Act.

3. Learned Magistrate framed charges against the petitioner on 11.11.2002. Petitioner challenges the charge framed by way of a revision petition alleging that he was not in-charge of or in control of the affairs of the company.

4. The criminal revision petition No.310/2003 came to be dismissed by the learned Additional Sessions Judge vide order dated 12.9.2003.

5. Learned Trial Judge and learned ASJ have noted various authorities relating to liability of managing director and what should be the necessary averments in respect of an accused person who is arrayed as an accused being a director or a managing director of a company.

6. Suffice would it be to note that in the decision reported as 2005 (8) SCC 89 *SMS Pharmaceuticals Ltd. vs. Neeta Bhalla & Anr.* as followed and explained in a subsequent decision reported

as *N.Rangachari vs. BSNL* AIR 2007 SC 1682 it was held that it would be a sufficient averment in the complaint, to make

it actionable, that a particular accused was a managing director of a company and was responsible for the conduct of its day-to-day business and affairs.

7. It may be noted that in *SMS Pharmaceutical's* case (supra), the Supreme Court pithly drew a distinction between a person who was a director and a person who was a managing director. In para 9 it was observed that managing directors, as the designation of their office suggests, are in-charge of a company and are responsible for the conduct of the business of the company. It was observed that such persons have to establish their defence at the trial i.e. that the offence was committed without their knowledge or that they exercised all due diligence to prevent the commission of the offence.

8. No case is made out to interfere with the order framing the charge or the order dismissing the criminal revision petition.

9. I may clarify that I have not dealt with the issue of maintainability of the instant petition which invokes Section 482 of the Code of Criminal Procedure for the reasons the facts are writ large as regards the merits of the controversy.

10. Dismissed.

August 09, 2007 **PRADEEP NANDRAJOG, J.**
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